

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CHARLES BAILEY,

No. 3:24-cv-00634-HZ

Plaintiff(s),

OPINION & ORDER

v.

OREGON STATE TREASURER,

Defendant(s).

Charles Bailey
P.O. Box 19813
Baltimore, MD 21225

Plaintiff, *Pro Se*

HERNÁNDEZ, District Judge:

This matter is before the Court on Plaintiff Charles Bailey's Amended Complaint. For the reasons below the Court dismisses this matter without service of process.

STANDARDS

A complaint filed *in forma pauperis* may be dismissed at any time, including before service of process, if the court determines that:

(B) the action or appeal—

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2); *see also Neitzke v. Williams*, 490 U.S. 319, 324 (1989)(*sua sponte* dismissals under section 1915 “spare prospective defendants the inconvenience and expense of answering” complaints which are “frivolous, malicious, or repetitive”); *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000)(section 1915(e) applies to all *in forma pauperis* complaints, not just those filed by inmates). A complaint is frivolous when “it lacks an arguable basis in law or in fact.” *Neitzke*, 490 U.S. at 325; *Ozim v. City & Cnty. of San Francisco*, No. 21-15099, 2021 WL 5412457, at *1 (9th Cir. Nov. 19, 2021). A complaint fails to state a claim when it does not contain sufficient factual matter which, when accepted as true, gives rise to a plausible inference that defendants violated plaintiff’s constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 556–57 (2007). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

Courts, however, must construe *pro se* filings liberally. *Gonzalez-Castillo v. Garland*, 47 F.4th 971, 980 (9th Cir. 2022). A *pro se* complaint “‘however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.’” *Simmons v. United States*, 142 S. Ct. 23, 25 (2021)(quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). A *pro se* litigant will be given leave to amend his or her complaint unless it is clear that the deficiencies of the complaint cannot be cured by amendment. *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015)(citation omitted).

DISCUSSION

I. Allegations

On April 12, 2024, Plaintiff filed a pro se Complaint against Oregon State Treasurer, Tobias Read in which he stated:

Hello, im asking do you have a Legal department i can speak to? I plan to sue the state of Oregon for negligence of there medical board & improper deceitful ways of there judicial system. I lost my case. Oregon supreme court's because it was a Court clerk who actually signed for my mail & scrapped it! Leaving not leaving a reply which transitioned my case! USPS has them under investigation. I've notified the FBI agent Gabriel Montero also! In a nutshell what started out as a nightmare? My father passed suddenly January 30, 2021. His doctor signed his death certificate stating 12 years prostate cancer which was false! I pulled my father's medical records dating back 12 years prior & his prostate biopsy was negative! When I brung this to his attention? He then lawyered up & signed a contract stating my father wasn't his patient? But, my father's health insurance policy names him primary doctor! I notified State Treasury [sic] Mr. Tobias & also filed notice of claim with Oregon state but haven't gotten no response? I now seek representation. It's all or nothing. My record speaks for itself! I am a Law abiding citizen, never been arrested & God fearing. Please get in touch. I thank you for your time.

Compl., ECF 1, at 6.

On May 5, 2024, the Court granted Plaintiff leave to proceed *in forma pauperis* but dismissed the Complaint without service for failure to comply with [Federal Rules of Civil Procedure 8](#), failure to establish this Court has either federal-question or diversity jurisdiction, and on the basis that Eleventh Amendment immunity barred Plaintiff's claim to the extent it was asserted against Reed in his official capacity and sought damages. The Court granted Plaintiff leave to file an amended complaint to cure the deficiencies set out in the Opinion and Order.

On May 24, 2024, Plaintiff filed an Amended Complaint consisting of a list of ten exhibits. The exhibits are described as:

3 – OPINION & ORDER

1. grievance
2. culprit investigation USPS
3. FBI investigation
4. dismissal due to fraud
5. dismissal due to fraud
6. retainment of medical and death records
7. death certificate fraud 2021
8. medical record showing 12 years prior prostate biopsy was negative 2009
9. fraudulent accusation saying my father wasn't the doctor's patient
10. my father's health insurance naming the doctor primary doctor despite of the fraudulent [illegible] he signed.

Am. Compl. ("FAC"), ECF 6, at 1-2. The "grievance" states:

Hello Your Honor. I just received mail from you dated May 9, 2024. I thank very much for granting me "Application to Proceed In Forma Pauperis", & will file amended complaint by June 9, 2024. I don't know Your Honor, but, it comes to my attention alot [*sic*] of clerks in the court system have a "buddy-buddy" relationship with high powered firms. I experience this with Oregon supreme court clerk who was signing for my mail then disposing of it leaving my case in transition because it was a litigation war & the court claim I wasn't replying. USPS gave me the culprit's name which if you didn't see it with my filing? It's included in the email & will be sent again the 9th of June 2024. I included FBI agent Gabriel Montero along with this email because he told me everything being sent he wants included for investigation. Thru the discussion of allegations I read good thru the passage of discussion, but, nothing was included about USPS investigation, or, FBI. Not only one mention [*sic*] of Oregon medical systems & Oregon judicial systems error I have on paper & the doctor signing my father 's death certificate stating 12 years prostate cancer 2021, when I showcased 12 years prior 2009 his prostate biopsy was negative! All on medical paperwork. Then the doctor signing a contract stating my father wasn't his patient? But, my father's health insurance policy names him primary doctor! I really think the documentation was token out there for you didn't receive it. For example, Ms. Farrell of your courthouse Your Honor, told me purposely nothing

was received by me? But, when I emailed her supervisor & included my Post Office receipt & included FBI agent Gabriel Montero along with the email? All of the sudden it was filed??? All respect to you Your Honor, I know that you're a Hardworking Dedicated Judge. I please ask that you reconsider after seeing the paperwork I sent in this email? Until then, I'll happily have it to you in mail by June 9, 2024. I thank you for your time.

Id. at 3. Attachment 2 is a letter to Plaintiff from a manager of the Criminal Investigations Service Center of United States Postal Service stating:

Thank you for the information you provided this office regarding:

EVELYN TURCOTT
OREGON SUPREME COURT

* * *

A review of this matter indicates that your complaint would be best handled by:

USPS CONSUMER AFFAIRS ATLANTIC AREA

* * *

Please be advised that your complaint has been forwarded to the address above for whatever action they deem appropriate. Any future concerns relating to this matter should be directed to the address shown above.

FAC, Ex. 2 at 1. Attachment 3 is an email to Plaintiff from FBI Special Agent Gabriel G.

Montero stating, “Good Morning Charles, Email received!” FAC, Ex. 3 at 1. Attachment 5 is an appellate judgment and supplemental judgment from the Oregon Court of Appeals in *Bailey v.*

Bley, 22CV24526, dismissing the appeal and stating:

[Bley] moves to dismiss this appeal on the ground that despite having been given the notice required by [ORAP 7.40](#), [Bailey] has, nonetheless, failed to file an undertaking as required by ORS 19.300. [Bailey] has not filed a response to the motion to dismiss. *See* [ORAP 7.40\(3\)](#). The motion to dismiss is well taken and, accordingly, is granted.

FAC, Ex. 5 at 1. Attachment 4 is an amended order of dismissal entered by the Oregon Supreme Court in *Bley* stating in pertinent part:

It appears that [Bailey] is seeking to obtain this court's review of the order of the Appellate Commissioner dated July 31, 2023. It further appears that [Bailey] did not seek reconsideration of the order of the Appellate Commissioner under [ORAP 7.55\(4\)\(a\)](#). A decision of the Appellate Commissioner is not subject to a petition for review to the Supreme Court [ORAP 7.55\(4\)\(c\)](#). Appellant's petition for review is dismissed.

FAC, Ex. 4 at 1. Attachments 6, 7, 8, and 10 are a request for family records; a death certificate of Plaintiff's father, Charles L. Bailey; a one-page medical history showing a negative prostate biopsy for Charles L. Bailey in 2009; and an undated statement listing Dennis Bley, D.O., as Charles L. Bailey's primary care provider. Attachment 9 is a September 21, 2022, declaration of Bley filed in Multnomah County Circuit Court in which he testifies he "work[s] as an internist and provide[s] care to patients at Broadway Medical Clinic in Portland, Oregon[;] . . . [Plaintiff's] father was a patient of Broadway Medical Clinic. However, he was not [Bley's] patient and [Bley] never saw him in clinic for any of his medical visits." FAC, Ex. 9 ¶¶ 2-3.

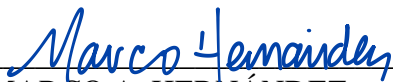
Plaintiff's Amended Complaint and attachments do not cure the deficiencies set out in the Court's May 5, 2024, Opinion and Order. Specifically, the Amended Complaint and attachments fail to give Defendant "fair notice of what [P]laintiff's claim is and the grounds upon which it rests in order to enable [Defendant] to prepare an answer . . . and to identify the nature of this case." *Herta v. Wiblemo*, No. 22-CV-1679-BAS-BGS, 2023 WL 116346, at *2 (S.D. Cal. Jan. 5, 2023)(citation omitted)). Plaintiff's Amended Complaint, therefore, fails to comply with [Rule 8](#). In addition, as with his original Complaint, Plaintiff's Amended Complaint and attachments do not establish that this Court has either federal-question or diversity jurisdiction. Finally, as with Plaintiff's original Complaint, the Amended Complaint and attachments fail to establish that Defendant is not entitled to Eleventh Amendment immunity.

CONCLUSION

For these reasons, the Court dismisses Plaintiff's Amended Complaint without service of process and dismisses this matter with prejudice.

IT IS SO ORDERED.

DATED: June 12, 2024.


MARCO A. HERNÁNDEZ
United States District Judge